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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE 28,
RULES OF THE SUPREME COURT
OF ARIZONA

Supreme Court No. R-13-0025

**Petitioner's Reply to Comment by
State Bar of Arizona re:
Petition to Amend Rule 28,
Rules of the Supreme Court of
Arizona**

Mike Palmer, petitioner, replies to the State Bar's Comment which, predictably, argues that the Bar shouldn't be barred from petitioning or commenting in the Supreme Court's public forum.

Apparently focused on its own self-interests, the Bar overlooked the critical third party in this matter. Namely, the public, whom, on its website, the Bar claims is serves.

Look, the overarching motive behind my petition is to promote public confidence in the Judiciary. And that trust can only be fostered by avoiding the appearance of impropriety. Completely. Since the Bar is a creation of (and beholden to) the Court, it is inherently improper to let the Bar petition or comment in the Court's forum. Consider the following example.

Suppose the Court agrees with the Bar in this instant matter and denies my

petition. Won't the public be right to question whether there was any favoritism when the Court agreed with the body it created? In the real world, we call that Nepotism. (Some call the relationship incestuous.)

And what a strange body the Court has created.

Consider: the Bar says it's a non-profit corporation. And yet, unlike normal non-profits, it has absolute immunity from suit, because it's an arm of the Supreme Court.

And even though the Justices are not named on paper as officers of that corporation, they can order the Bar around as though they were officers. (See Bar's Comment, p. 2, lines 4-6). That is not the hallmark of an independent body.

Next, this non-profit corporation enjoys a privilege other corporations can't enjoy. Even though Arizona is a right to work state, all attorneys in Arizona essentially have to join a union (complete with dues) if they want to work here.

As it relates to the Bar's claimed need to represent its members in the forum, well, first, why can't the individual members speak for themselves? They didn't join the Bar because they wanted a representative organization. They joined the Bar because they had to. In turn, they got a representative organization, whether they wanted it or not.¹

¹ The Bar claims that it "represents its membership in the same manner as any elected, representative body." But, as above, that is not exactly true. For

Returning to the Bar's claim that it must be allowed access to the forum to represent its members: Whether the Bar truly represents all its members, as claimed, cannot truly be known. It's unlikely that 100% of all Arizonan attorneys are in complete agreement with the Bar on matters in the forum. So the best one can say is that the Bar represents the majority of its members. But I suspect that that is suspect. Not even the Bar claims to represent a majority. (See Bar's Comment, p. 2, lines 16-17.)

As to conflict of interest, the Bar is probably correct — in a legal hair-splitting Pharisaical way — saying that it is not in a lawyer-client relationship with its members. Still, that does not make my call for ethical behavior invalid. It is always right to do good, whether you have to or not. Moreover, the Bar can bring discipline against its members. What brave lawyer is going to stick his neck out petitioning or commenting against the Bar/Court? That would be economic suicide. The Bar's own Ethics Rules are quite good and the Bar would do well to abide by them — to avoid conflicts of interest by staying out of the forum — whether required by law or not.

The Bar concluded its Comment by saying that granting my petition would "silence the very organization this Court created." That says it all.

example, I am not forced to join, pay dues and abide by the rules of any representative bodies I join.

The State Bar is a Frankenstein monster, a strange creation whose body is a non-profit but has arms from the Court. It's not clear where the head comes from, but the creature takes orders from the Court. Given this Master/Slave relationship then, this creature must be stopped from crashing the public forum.

Conclusion

I said in my petition that this rule change would not prevent an individual Governor from petitioning or commenting in the forum. Therefore, there is no downside to accepting my petition. No one will be harmed. The Bar can still have its reviews by its Governors and the Governors can still decide what they want to post in the forum. The only effect of the change here is that a Governor has to post a petition or comment as Mr. X, Attorney at Law. Not as "The State Bar of Arizona." This is a distinction without much of a difference and the Bar protests too much.

While I am aware of the saying "it's not what you know, it's who you know," whom you know should not matter in the forum. If a petition or comment has merit, then it has merit regardless of who offered it.² So then, if the Bar has good ideas to offer, it should not make any difference if a Bar Governor offers it instead of the Bar proper.

² For a real-world example, see John 9:34 in the Bible.

There are two upsides. First, this rule change will help foster public confidence in the Judiciary by mitigating the public's perception that, as far as the forum goes, the Bar is doing the Court's bidding. If the Court wants to propose a controversial rule change, it should do so directly. Not by ordering its creature to do its bidding.

Second, it may be that silencing the Bar will give its individual members a voice to dissent and be heard. I'm told that diversity is a good thing. So everybody wins if the Court grants this petition.

Submitted this 1st day of July 2013

By : /s/ Mike Palmer
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